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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,186	09/12/2003	A. Wayne Olson	UNICA-002C	8298

7590 05/18/2007  
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EXAMINER
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HEWITT II, CALVIN L

ART UNIT	PAPER NUMBER
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3621

MAIL DATE	DELIVERY MODE
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05/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/661,186

Applicant(s)

OLSON, A. WAYNE

Examiner

Calvin L. Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Status of Claims***

1. Claims 1-19 have been examined.

### ***Examiner's Comment***

2. Language that suggest or makes optional (e.g. "upon", "agreeing to") but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation (MPEP §2106 II C; *In re Johnston*, 77 USPQ2d 1788 (CA FC 2006); *Intel Corp. v. Int'l Trade Comm'n*, 20 USPQ2d 1161 (Fed. Cir. 1991)).

### ***Claim Objections***

3. Claims 4, 5, 14 and 15 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 4 is directed to verifying whether or not a customer has sufficient funds to cover a purchase, *if the customer does not have a deposit account*.

However, claim 1, from which claim 4 depends, requires that the establishing of a deposit account, hence claim 4 does not further claim 1. Claim 14 recites similar language to claim 1.

Claims 5 and 15 are also objected as they depend from claims 4 and 14, respectively.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 7, 9, 11, 12 and 17 recite transferring a purchase price to a settlement account. To one of ordinary skill, this step is unclear as what is transferred is not the purchase price, but an amount of funds, for example, equal to a purchase price (*In re Zletz*, 13 USPQ2d 1320 (Fed. Cir. 1989)).

Claims 2-6, 8-10 and 13-19 are also rejected as each depends from either claim 1, 7 or 11.

Claim 3 recites the limitation "the purchase of the product" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 is directed to verifying whether or not a customer has sufficient funds to cover a purchase, *if the customer does not have a deposit account*. However, this contradicts claim 1, which requires the establishment of such an account. Claim 14 recites similar language to claim 1.

Claims 5 and 15 are also rejected as they depend from claims 4 and 14, respectively.

Claims 8 and 18 recite transferring funds to a merchant on a daily basis. However, to one of ordinary skill, if funds are transferred to a merchant in this manner the result for the customer will be multiple bills for an already purchased product and overcharging.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Payne et al., U.S. Patent No. 5,715,314.

As per claims 1, 3-5, 10, 11, 13-15, and 16, Payne et al. teach a method making a purchase from a merchant comprising:

- establishing a deposit account on behalf of a customer and transferring funds from a financial institution into the account (figure 2G, item 76; column 6, lines 19-30; column 7, lines 14-16)
- placing an order with a merchant (column 5, lines 26-56)
- verifying that the deposit account has sufficient balance to cover the price of the order (column 7, lines 14-20), notifying the merchant that the deposit account has sufficient balance (column 7, lines 13-54) and delivering the product to the customer (figure 10; column 7, lines 46-51)
- approving the order subsequent to verifying that the deposit account has sufficient balance to cover the price of the order (column 7, lines 14-20)

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payne et al., U.S. Patent No. 5,715,314 in view of Walker et al., U.S. Patent No. 5,794,207.

As per claims 1-19, Payne et al. teach a method making a purchase from a merchant comprising:

- establishing a deposit account on behalf of a customer and transferring funds from a financial institution into the account (figure 2G, item 76; column 6, lines 19-30; column 7, lines 14-16)
- placing an order with a merchant (column 5, lines 26-56)
- verifying that the deposit account has sufficient balance to cover the price of the order (column 7, lines 14-20), notifying the merchant that the deposit account has sufficient balance (column 7, lines 13-54) and delivering the product to the customer (figure 10; column 7, lines 46-51)
- approving the order subsequent to verifying that the deposit account has sufficient balance to cover the price of the order (column 7, lines 14-20)

Regarding how money is transferred to a merchant, claims 8 and 18 are broad enough to read on a merchant receiving daily orders for its goods and services, which is at least suggested by the teachings of Payne et al. (column 4, lines 50-55). Payne et al. do not explicitly recite transferring funds to a set aside account

subsequent to balance verification. Walker et al. teach transferring funds into a second account (e.g. set-aside account, settlement account) in the amount of a purchase price (column 14, lines 5-7; column 22, lines 1-20). Walker et al. also teach a user sending a signature to an escrow provider to provide verification of delivery (column 22, lines 15-22) and charging a fee by the escrow provider for providing a service (column 20, lines 16-30). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Payne et al. and Walker et al. in order to ensure that a seller delivers purchased goods ('207, column 22, lines 9-12).

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer, can be reached at (571) 272-6779.

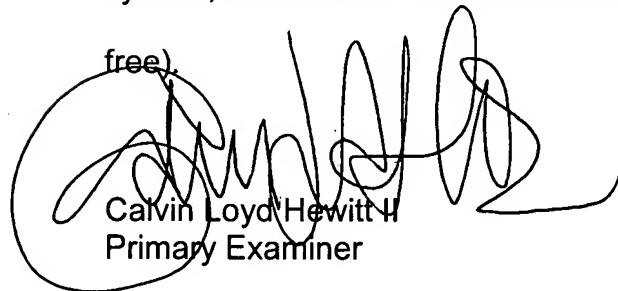
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through



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free).

A handwritten signature in black ink, appearing to read "Calvin Lloyd Hewitt II", is written over a circular stamp. The signature is fluid and cursive.

Calvin Lloyd Hewitt II  
Primary Examiner

May 11, 2007